UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF TRENTON

NEW JERSEY SECOND AMENDMENT SOCIETY and MARK CHEESEMAN,	:	HON. MICHAEL A. SHIPP, U.S.D.J.
	:	Civil Action No. 16-4906 (MAS-DEA)
Plaintiffs,	:	
v.	:	
CHRISTOPHER S. PORRINO in his Official Capacity as Acting Attorney General of New Jersey, and COLONEL RICK FUENTES in his Official Capacity as Superintendent of the New Jersey State Police,	:	CONSENT ORDER
Defendants.	:	

THIS COURT having received a verified complaint filed by Plaintiffs New Jersey Second Amendment Society and Mark Cheeseman (Docket Entry 1), an Answer filed by Defendants (Docket Entry 18), a pending Motion for Judgment on the Pleadings filed by Plaintiffs (Docket Entry 19), and a response to Plaintiffs' Motion for Judgment on the Pleadings adjourned by Defendants, the Attorney General of New Jersey and the Superintendent of the New Jersey State Police in their respective official capacities; and

This Court finding that plaintiffs' asserted claims in this matter are whether, in light of the United States Supreme Court's recent decision in *Caetano v. Massachusetts*, ___ U.S. ___, 136 S. Ct. 1027, 194 L. Ed. 2d 99 (2016) (per curiam), they have a right to possess a stun gun protected by the Second Amendment to the United States Constitution, notwithstanding the State of New Jersey's prohibition of "stun guns" (defined as "any weapon or other device which emits an electrical charge or current intended to temporarily or permanently disable a person"), by declaring that "[a]ny person who knowingly has in his possession any stun is guilty of a crime of the fourth degree," N.J. Stat. Ann. § 2C:39-1(t); N.J. Stat. Ann. § 2C:39-3(h); and

This Court finding that a separate New Jersey statute, N.J. Stat. Ann. § 2C:39-9(d), among other things prohibits the sale or shipment of "weapons," which are statutorily defined as including all "stun guns," by declaring that any such person who does so "is guilty of a crime of the fourth degree," N.J. Stat. Ann. § 2C:39-1(r)(4); and

This Court finding that New Jersey statutes define a "crime of the fourth degree" as one imposing certain penalties including imposition of a term of imprisonment of up to 18 months and a fine of up to $10,000.00, N.J. Stat. Ann. § 2C:43-3(b)(2); N.J. Stat. Ann. § 43:3-6(g); and

This Court finding that plaintiffs' prayer for relief in their verified complaint includes, among other things, a request for an order enjoining Defendants and their officers, agents, servants, and employees from N.J. Stat. Ann. § 2C:39-3(h) to the extent it bans the acquisition, possession, carrying or use of "Tasers[®] and other electronic arms" (Docket Entry 1, Prayer for Relief, § 1); and a request for an order declaring that N.J. Stat. Ann. § 2C:39-3(h)is unconstitutional and violates the Second Amendment to the United States Constitution (Docket Entry 1, Prayer for Relief, § 2); and an order declaring N.J. Stat. Ann. § 2C:39-3(h)unenforceable (Docket Entry 1, Prayer for Relief, § 3); and costs of suit, including attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

Defendants having advised the Court that, they, in their official capacities, and in light of the aforementioned recent United States Supreme Court decision, recognize that an outright ban on the possession of electronic arms within the state, regardless of the contextual circumstances surrounding any such possession, would likely not pass constitutional muster and enter into this consent decree and do hereby concede that the aforementioned statute banning electronic arms in New Jersey is unconstitutional.

IT IS on this 25th day of April, 2017, HEREBY ORDERED THAT:

1. The Second Amendment guarantees individuals a fundamental right to keep and bear arms for self-defense *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. Chicago*, 561 U.S. 742 (2010); *Caetano v. Massachusetts*, 577 U.S. __(2016). Further, "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Heller*, 554 U.S. at 582; *Caetano*, slip op. at 1 (per curiam).

2. Pursuant to the holdings in *Heller*, *McDonald* and *Caetano*, N.J. Stat. Ann. § 2C:39-3(h), to the extent this statute outright prohibits, under criminal penalty, individuals from possessing electronic arms, is declared unconstitutional in that it violates the Second Amendment to the United States Constitution and shall not be enforced.

2. N.J. Stat. Ann. § 2C:39-9(d)shall not be enforced to the extent this statute prohibits, under criminal penalty, the sale or shipment of Tasers® or other electronic arms; and

3. For good cause shown, any and all further proceedings in this matter, are hereby stayed for a period of 180 days until

such time that any necessary revisions to existing controlling legal authorities may be implemented; and

4. Plaintiffs are prevailing parties for purposes of an award of reasonable attorneys' fees and costs of suit pursuant to 42 U.S.C. § 1988, and within 30 days after the date of this Order, the parties will either come to an amicable resolution as to the amount of attorneys' fees and costs, or the Plaintiff shall make application to the Court for resolution; and

5. Nothing in this order shall constitute an admission of liability, duty, or wrongdoing by any party or an admission that any other statute, law, or any policy, practice, or procedure of the State of New Jersey, its officers, officials, employees, agents, or servants, at any time or in any way violated federal or any other law; and

6. No other law, including but not limited to the remainder of N.J. Stat. Ann. 2C:39-1 et seq., shall be affected by the entry of this Order.

7. The effect of this Order shall be fully stayed for 180 days to allow the State of New Jersey to institute new laws, rules, or regulations "that will impose reasonable limitations, consistent with public safety and the Second Amendment," on the possession and/or carrying of electronic arms or "stun guns." *Cf. Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012).

HON. MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

Dated:

I consent to the form and entry of the within Order.

RYAN SCOTT WATSON, ESQ.
LAW OFFICES OF RYAN SCOTT WATSON

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

By: ______________________
Matthew J. Lynch
Deputy Attorney General